

ENTERED

October 12, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

ELENA MARKHAM, on behalf of K.M., §

Plaintiff, §

v. §

Civil Action No. 6:21-cv-00030

HOLLY HAMILTON, et al., §

Defendants. §

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION

Before the Court is the June 10, 2021 Memorandum and Recommendation ("M&R") signed by Magistrate Judge Julie K. Hampton. (Dkt. No. 5). In the M&R, Magistrate Judge Hampton recommends that the Court *sua sponte* deny *pro se* Plaintiff Elena Markham's Motion for Emergency Injunction, (Dkt. No. 2), and dismiss her case with prejudice under 28 U.S.C. § 1915(e)(2)(B).¹ Magistrate Judge Hampton explains that Markham, who is proceeding *in forma pauperis*,² asserts frivolous claims involving fantastic or delusional scenarios. These scenarios center on the Texas Department of

¹ Section 1915, which applies to proceedings *in forma pauperis*, states in relevant part:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case *at any time* if the court determines that . . . the action . . . (i) is *frivolous* or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B) (emphases added).

² The Notice of Case Filing states that Markham's application to proceed *in forma pauperis* was granted. (Dkt. No. 4).

Family and Protective Services, which Markham alleges harvests organs to extract adrenochrome and abducted and sold her daughter into human sex trafficking.

Markham was provided notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); General Order No. 2002-13. The deadline to file objections was fourteen days after being served with a copy of the M&R. 28 U.S.C. § 636(b)(1). The June 10 M&R, which was sent to Markham's Victoria, Texas address, was returned undeliverable on June 23 and June 24, 2021. (Dkt. No. 6-2); (Dkt. No. 7). On July 8, 2021, Markham submitted her Objections.³ (Dkt. No. 11). The Cheney, Washington address listed in her Objections is the same address listed in her Complaint. Compare (Dkt. No. 11-1) with (Dkt. No. 1 at 1). The docket further reflects that the Clerk re-mailed the M&R to Markham at her Washington address on July 16, 2021. In light of the confusion regarding Markham's address, the Court **FINDS** that Markham's Objections were timely filed.

The Court conducted *de novo* review of the M&R, the objections, the record, and the applicable law. *See* 28 U.S.C. § 636(b)(1)(C). A district court conducting *de novo* review "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge" and "may also receive further evidence or recommit the matter to the magistrate judge with instructions." *Id.*

Markham's Objections, which merely restate similar allegations in the Complaint and Motion for Emergency Injunction, are frivolous. The Court overrules her Objections

³ Magistrate Judge Hampton construed this filing as Markham's Objections. (Dkt. No. 13).

and **ACCEPTS** the M&R. Accordingly, the Court **DENIES** Markham's Motion for Emergency Injunction, (Dkt. No. 2), and **DISMISSES WITH PREJUDICE** her case as frivolous under 28 U.S.C. § 1915(e)(2)(B).

It is SO ORDERED.

Signed on October 11, 2021.

Drew B Tipton
DREW B. TIPTON
UNITED STATES DISTRICT JUDGE